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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/675,371

09/30/2003

Robert Beckstrom

6065/88622

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03/20/2006

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EXAMINER

DAYE, CHELCIE L

ART UNIT

PAPER NUMBER

2161

DATE MAILED: 03/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/675,371	BECKSTROM ET AL.	
	Examiner	Art Unit	
	Chelcie Daye	2161	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 9/30/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/03/2005</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. This action is issued in response to Application filed on September 30, 2003.
2. Claims 1-20 are pending.

Information Disclosure Statement

3. The information disclosure statement (IDS) submitted on January 3, 2005 was filed after the mailing date of the application on September 30, 2003. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-20 of US Patent Application No. 10/675371 are rejected as claiming the same invention as that of claims 1-9 and 19-24 of US Patent Application No. 10/259356. This is a double patenting rejection.

6. The following table shows claims 1-20 in the instant application "10/675371" that are rejected by corresponding claims 1-9 and 19-24 in US Patent Application No. "10/259356".

Claim Comparison Table

<u>10/675371</u>	<u>10/259356</u>
Claims 1-19	1-9 and 19-24
Claim 20	1 and 8

7. Regarding Claims 1-19, of the instant application, independent claims 1 and 11 are anticipated by claims 1 and 19 of the corresponding application, wherein the instant application claim encompasses the corresponding application claim, making the claims not patentably distinct. As a result, claims 2-10 and 12-19, in the instant application, are rejected for being dependent upon the independent claims.

8. Regarding Claim 20, of the instant application, the claim is anticipated by claims 1 and 8 of the corresponding application, and is not patentably distinct.

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9. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Objections

10. Claim 20 is objected to because of the following informalities: Lines 4 and 6 of claim 20 are missing the letter "a" in front of "computerized sub-system". Also, the end of line five is missing a connecting word such as "and" or "or". Appropriate correction is required.

Claim Rejections - 35 USC § 112

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

12. Claims 4,5,10,14, and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 4 and 14 recite the limitation "the background" in the first line of the claim, examiner is unsure as to what "background" applicant is referring to, since there is no prior mention. There is insufficient antecedent basis for this limitation in the claim.

Claims 5 and 15 recite the limitations "the foreground" and "the stress levels" in the first and second lines of the claim, examiner is unsure as to what "foreground" and "stress level" applicant is referring to, since there is no prior

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mention of either. There is insufficient antecedent basis for this limitation in the claim.

Claim 10 recites the limitation "the contents" in the first line of the claim, examiner is unsure as to what "content" applicant is referring to, since there is no prior mention. There is insufficient antecedent basis for this limitation in the claim.

13. Claims 8,18, and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 8,18, and 20, the term "substantially" renders the claim(s) indefinite because the term refers to an extent or degree of something, not an actual comparison. Examiner is unsure as to how much in real-time the monitoring needs to be done, rendering the claims indefinite.

Claim Rejections - 35 USC § 102

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15. **Claims 1,3,4,6-8,11,13,14,16-18, and 20 are rejected under 35**

U.S.C. 102(b) as being anticipated by Federov (US Patent No. 6,047,060)

issued on April 4, 2000.

Regarding Claims 1 and 11, Fedorov discloses a method for improving transactions in a communication system, comprising:

dynamically monitoring a data session (column 5, lines 26-29, Fedorov)¹ between at least one of first and second parties (column 7, lines 56-59, Fedorov)² in a transaction in the communication system (column 10, lines 48-55, Fedorov); and

engaging a third party into the transaction (column 7, lines 47-50, Fedorov) as a function of the monitoring of the data session between the first and second parties (column 7, lines 56-59, Fedorov).

Regarding Claims 3 and 13, Fedorov discloses the method wherein the third party is an automated input source (column 7, lines 61-67, Fedorov).

Regarding Claims 4 and 14, Fedorov discloses the method wherein the third party engages in the background of the data session of at least one of the first and second parties (column 7, lines 50-54, Fedorov)³.

¹ Examiner Notes: "Interactive" corresponds to dynamic.

² Examiner Notes: The agent and the customer represent the first and second parties.

³ Examiner Notes: Since the supervisor is talking to the agent and not both, the supervisor is participating in the background of the call.

Regarding Claims 6 and 16, Federov discloses the method wherein the third party communicates only with one of the first and second parties (column 8, lines 27-35, Federov)⁴.

Regarding Claims 7 and 17, Federov discloses the method wherein the third party communicates with both of the first and second parties (column 8, lines 27-35, Federov)⁵.

Regarding Claims 8 and 18, Federov discloses the method wherein the monitoring of the data session between the first and second parties is conducted substantially in real-time (column 7, lines 50-54, Federov).

Regarding Claim 20, Federov discloses a system for improving transactions in a communication system comprising:

a computerized transaction handling system which handles data sessions between at least of first and second parties (column 7, lines 56-59, Federov) in a transaction in the communication system (column 10, lines 48-55, Federov);

computerized sub-system associated with the transaction handling system, which dynamically monitors at least some of the data sessions (column 5, lines 26-29, Federov);

⁴ Examiner Notes: "To communicate with the agent transparent to the caller" corresponds to only communicating with one of the parties (i.e. the agent).

⁵ Examiner Notes: "To participate in the calls" corresponds to communicate with both parties.

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computerized sub-system associated with the transaction handling system which engages a third party into the transaction (column 7, lines 47-50, Federov) in response to detection substantially in real-time of at least one target parameter (column 7, lines 50-54, Federov).

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. **Claims 2,5,9,10,12,15, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Federov (US Patent No. 6,047,060) filed on February 20, 1998 as applied to claims 1,3,4,6-8,11,13,14,16-18, and 20 above, and further in view of Shaffer (US Patent No. 6,363,145) filed on August 17, 1998.**

Regarding Claims 2 and 12, Federov discloses all of the claimed subject matter. Federov discloses a third party, however it is silent with respect to the third party being virtual. On the other hand, Shaffer discloses a third party being a virtual party (column 7, lines 19-24,

Shaffer)⁶. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate Shaffer's teachings into the Federov system. Federov and Shaffer are analogous art because they are from the same field of endeavor of call monitoring by a third party participant in an agent call activity. A skilled artisan would have been motivated to combine in order to refer to anything that seems real but is actually simulated by the operating system. The virtual third party was able to perform some of the same duties as a human supervisor performed, which alleviated some of the supervisor's responsibilities. As a result, the virtual party enabled the system to operate with more efficiency and effectiveness.

Regarding Claims 5 and 15, the combination of Federov in view of Shaffer, disclose the method wherein the third party engages in the foreground of the data session (column 8, line 29, Federov) to reduce the stress levels of at least one of the first and second parties (columns 7-8, lines 66-67 and 1-5, respectively, Shaffer).

Regarding Claims 9 and 19, the combination of Federov in view of Shaffer, discloses the method wherein the monitoring of the data session is conducted by at least one of; analyzing a respective voice signal of at

⁶ Examiner Notes: The agent notification is an application, which performs some of the same duties as the supervisor such as detecting voice patterns over the desired level and providing

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least one of the first and second parties (column 4, lines 34-39, Shaffer), converting a respective voice signal of at least one of the first and second parties to text and analyzing the text (column 9, lines 35-39, Federov), and analyzing a physical stress level of at least one of the first and second parties (column 6, lines 48-52, Shaffer).

Regarding Claim 10, the combination of Federov in view of Shaffer, discloses the method wherein the dynamic monitoring comprises inspection of the contents of data messages (column 10, lines 31-34, Federov)⁷ and wherein detection of problematic phrases engages the third party (column 5, lines 29-36, Shaffer).

Points of Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chelcie Daye whose telephone number is 571-272-3891. The examiner can normally be reached on M-F, 7:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic can be reached on 571-272-4023. The fax

suggestions to improve the performance. As a result, since the agent notification is not human, it is therefore, virtual.

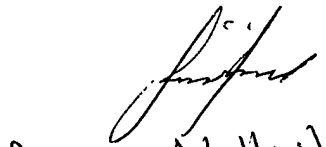
⁷ Examiner Notes: "Reviewing" corresponds to inspecting.

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phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Chelcie Daye
Patent Examiner
Technology Center 2100
March 15, 2006



Sara Al-Hashemi